IN THE

Supreme Court of the United States

October Term, 1976

No. 76-99

OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA,

Petitioner,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit entered on May 11, 1976, in the above-entitled case.

Opinion Below.

The opinion of the Court of Appeals, not yet officially reported, appears in the Appendix hereto. No opinion was rendered by the District Court for the Central District of California.[1]

Jurisdiction.

The judgment of the Court of Appeals for the Ninth Circuit was entered on May 11, 1976, and this petition

[1]The Findings of Fact and Conclusions of Law made and entered by the District Court appear at 12 FEP 1298 (1976); the Court of Appeals' Opinion follows at 12 FEP 1300 (1976).

for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

Questions Presented.

Whether there is no time limitation whatsoever applicable to the EEOC's right to sue under Title VII of the Civil Rights Act of 1964, as amended.

This question involves the following subsidiary quesions:

(1) Whether the most analogous state statute of limitations is applicable to the EEOC's right to sue to collect back pay for private individuals;

(2) Whether the most analogous state statute of limitations is applicable to the EEOC's right to sue to obtain injunctive relief; and

(3) Whether the EEOC's right to sue is governed by any federal statute of limitations.

Statutory Provision Involved.

Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e *et seq.* (hereinafter "Title VII") provides in pertinent part:

> "[I]f within one hundred and eighty days from the filing of [a] charge . . . the Commission has not filed a civil action under this section . . . the Commission . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge . . . by the person claiming to be aggrieved. . . ."

Statement of the Case.

On December 27, 1970, Tamar Edelson filed a charge of discrimination against Occidental Life Insurance Company of California (hereinafter "Petitioner") with the Equal Employment Opportunity Commission (hereinafter the "EEOC") alleging that she had been discriminated against because of her sex. Her charge specified that "the most recent date on which this discrimination took place" was "October 1, 1970," the date of her discharge by Petitioner.

Although the EEOC acknowledged receipt of Ms. Edelson's charge on December 30, 1970, the EEOC did not formally file the charge until March 9, 1971. This was the only charge which Ms. Edelson ever filed against Petitioner, and the EEOC acknowledges that this is the charge upon which its entire complaint herein is based.

However, it was not until February 22, 1974—three years, four months, and 22 days after the occurrence of the single act of discrimination which Ms. Edelson had complained of—that the EEOC filed this complaint seeking back pay for numerous private individuals and injunctive relief. Accordingly, the District Court dismissed the EEOC's complaint upon the grounds that (1) Title VII imposed a 180-day federal statute of limitations on the EEOC's right to sue, and (2) alternatively, assuming that Title VII imposed no federal statute of limitations, the EEOC's suit was barred by the most analogous state statute of limitations.

On May 11, 1976, the Court of Appeals for the Ninth Circuit reversed on both grounds, holding that there was *no time limitation whatsoever* on the EEOC's right to sue. First, the Court found that the 180-day language of Title VII does not constitute a federal statute of limitations on the EEOC's right to sue, so that "there is simply no governing federal limitations period." (A. p. 5). Second, the Court refused to apply the most analogous state statute of limitations to the EEOC's right to sue.

It is to these two holdings that this Petition for Certiorari is directed, *particularly that aspect of the holding in which the Court expressly ruled contrary to two recent decisions of the Court of Appeals for the Fifth Circuit which held that the EEOC's right to recover back pay for private individuals is governed by the most analogous state statute of limitations.*

REASONS FOR GRANTING THE WRIT.

The Ninth Circuit's holding that the EEOC has an interminable right to sue to collect back pay for private individuals is in direct conflict with two recent decisions of the Fifth Circuit and contrary to numerous Supreme Court decisions which hold that the most analogous state statute of limitations should be applied in absence of an applicable federal statute of limitations, which rule has most recently been applied by the Supreme Court in a Civil Rights Act case in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975).

I.

The Ninth Circuit's Refusal to Apply the Most Analogous State Statute of Limitations to the Back Pay Aspect of the EEOC's Complaint Is in Irreconcilable Conflict With Two Recent Decisions of the Court of Appeals for the Fifth Circuit.

In *United States v. Georgia Power Co.*, 474 F.2d 906, 922-924 (5th Cir. 1973), the Fifth Circuit held that because there was no federal statute of limitations, the most analogous state statute of limitations was applicable to the back pay aspect of an employment discrimination suit brought by the United States Government under the Civil Rights Act of 1964. Thereafter, in *EEOC v. Griffin Wheel Co.*, 511 F.2d 456, 458 (5th Cir. 1975), affirmed on rehearing, 521 F.2d 223 (5th Cir. 1975), another three-judge panel of the Fifth Circuit held that the most analogous state statute of limitations was applicable to the back pay aspect of an employment discrimination suit brought by the EEOC under the Civil Rights Act of 1964.

The Sixth Circuit in dicta has expressed its agreement with *Georgia Power,*[2] and at least two district court decisions have reached the same result as *Griffin Wheel.*[3]

Nevertheless, the Ninth Circuit refused to apply the most analogous state statute of limitations to the back pay aspect of the EEOC complaint herein, finding instead that the EEOC's right to sue to recover back pay for private individuals was interminable. Expressly noting the contrary decisions of the Fifth Circuit, the Court stated, "We decline to follow its lead" (A. p. 11). The conflict between the Fifth and Ninth Circuits concerning the applicability of the most analogous state statute of limitations to the back pay aspect of an EEOC complaint is thus clear, unequivocal, and irreconcilable, and certiorari should be granted to resolve that issue.

II.

The Applicability of Federal and State Statutes of Limitation to the EEOC's Right to Sue Is of Critical, Pervasive, and Recurring Importance to the Judicial Administration of Title VII.

Over the years the EEOC will be the party-plaintiff in thousands of cases across the United States, many of which will involve EEOC efforts to recover back pay

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[2]In *United States v. Masonry Contractors Association of Memphis, Inc.,* 497 F.2d 871, 877 (6th Cir. 1974), the Sixth Circuit stated:

> "The appropriate statute of limitations for a Section 2000e-6 action [by the United States Government] is the limitation period prescribed by the state where the court sits for an action which seeks similar relief brought in a court in that state."

[3]*EEOC v. Eagle Iron Works,* 367 F.Supp. 817 (S.D. Iowa 1973), and *EEOC v. Christianberg Garment Co.,* 376 F.Supp. 1067, 1071-1073 (W.D. Va. 1974).

for private individuals. Furthermore, many of these EEOC complaints will undoubtedly be filed several years after the filing of the charge upon which these complaints are based.

Thus, whether any statute of limitations applies to EEOC complaints will be a constantly recurring issue, one which will continue to consume substantial time, energy, and resources of the federal courts and the litigants involved. Furthermore, litigation concerning such issues is certain to increase rather than to subside until this Court accepts review and definitively answers the question. Consequently, a prompt resolution is critical to a more effective utilization of limited federal court resources and a more expeditious resolution of EEOC complaints.

Furthermore, this Court has already resolved the statute of limitations issue with regard to employment discrimination suits brought by private individuals under the Civil Rights Act of 1866, holding in *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454 (1975), that the most analogous state statute of limitations is applicable to such suits. Accordingly, the most significant, recurring timeliness issue which remains in employment discrimination cases is whether the EEOC is also governed by some statute of limitations or whether its right to sue is interminable—the very issue presented by this Petition for Certiorari.

Finally, an early Supreme Court resolution of this issue is critical to fulfillment of the purposes behind Title VII. At the present time, the EEOC frequently takes several years simply to file its complaint in the federal court, apparently presupposing that its right to sue is interminable. If the EEOC is wrong in this belief—and there are compelling reasons set forth below

to believe that it is—its present practice of interminable delays clearly subverts the purpose of Title VII by preventing expeditious resolution of employment discrimination claims. If, however, such interminable delays are indeed what Congress intended, that should be established by Supreme Court decision, not administrative fiat, for the adverse effect of such delays is obvious.

III.

The Ninth Circuit Erred in Refusing to Apply the Federal or Most Analogous State Statute of Limitations to the EEOC's Right to Sue.

Four choices exist concerning the timeliness of EEOC complaints: (1) the EEOC's right to sue is governed by a federal statute of limitations, (2) the EEOC's right to sue is governed by the most analogous state statute of limitations, (3) the EEOC's right to sue to collect back pay for private individuals is governed by the most analogous state statute of limitations, or (4) the EEOC's right to sue is interminable. The Ninth Circuit concluded that the most extreme, fourth option—the interminable right to sue—was the one Congress intended. That conclusion is plainly in error.

With regard to the first option—the 180-day provision of Title VII as a federal statute of limitations—Petitioner presented 18 pages of argument and authority to the Ninth Circuit showing why that was Congress' intent, and Petitioner remains convinced that that conclusion has substantial merit. Petitioner also presented argument to the Ninth Circuit in support of the second option—that the EEOC's right to sue, not just its right to collect back pay for private individuals, is governed by the most analogous state statute of limitations. Because there is as yet no conflict among the circuits on the issues raised under either the first or second options, Petitioner will not summarize its arguments on these points at this time, focusing instead on the compelling reasons why the Ninth Circuit erred in refusing—contrary to the Fifth Circuit—to apply the most analogous state statute of limitations to the back pay aspect of the EEOC's complaint and holding that the EEOC has an interminable right to sue for back pay. However, if this Court grants the writ of certiorari concerning the applicability of state statutes of limitation to back pay claims asserted by the EEOC on behalf of private individuals, Petitioner submits that it would be advisable for this Court also to grant certiorari on the federal statute of limitations issue and the general state statute of limitations issue, thereby affording itself full consideration of all of the available options.

A. The Supreme Court and the Federal Courts Have, in the Absence of Any Applicable Federal Statute of Limitations, Repeatedly Applied the Most Analogous State Statute of Limitations to Complaints Brought Under Civil Rights Acts and Numerous Other Federal Statutes.

Many federal statutes contain no statute of limitations, and thus the Supreme Court has repeatedly held that suits filed under such statutes are governed by the most analogous state statute of limitations:

Civil Rights of 1866: Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975);

Civil Rights Act of 1870: O'Sullivan v. Felix, 233 U.S. 318, 322-324 (1914);

Labor Management Relations Act: Autoworkers v. Hoosier Cardinal Corp., 383 U.S. 696, 701-705 (1966);

Sherman Antitrust Act: Chattanooga Foundry Co. v. Atlanta, 203 U.S. 390, 397 (1906);[4]

National Bank Act: Cope v. Anderson, 331 U.S., 461, 463 (1947); *Rawlings v. Ray*, 312 U.S. 96, 97-98 (1941); *Pufahl v. Estate of Parks*, 299 U.S. 217, 225 (1936);

Patent Act: Campbell v. Haverhill, 155 U.S. 610, 613-618 (1895);

Act of Feb. 26, 1845 (re custom duties): Barney v. Oelrichs, 138 U.S. 529, 530 (1891).

Similarly, the federal courts have applied state statutes of limitation to other federal statutes which contained no federal statute of limitations:

Civil Rights Act of 1964: United States v. Georgia Power Co., 474 F.2d 906, 923 (5th Cir. 1973); *EEOC v. Griffin Wheel Co.*, 511 F.2d 456, 458-459 (5th Cir. 1975);

Railway Labor Act: Jones v. Trans World Airlines, Inc., 495 F.2d 790, 799 (2nd Cir. 1974);

Labor Management Reporting and Disclosure Act of 1959: Sewell v. Grand Lodge of Intern. Ass'n of Machinists and Aerospace Workers, 445 F.2d 545, 548-549 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972);

[4]A federal statute of limitations for suits brought under the antitrust laws was enacted by Congress in 1955. 15 U.S.C. Sections 15(b), 16.

Clayton Antitrust Act: Englander Motors Inc. v. Ford Motor Co., 293 F.2d 802, 804 (6th Cir. 1961); *Williamson v. Columbia Gas & Electric Corp.*, 27 F.Supp. 198 (D.Del. 1939), *affirmed*, 110 F.2d 15 (3rd Cir. 1939), *cert. denied*, 310 U.S. 639 (1940);

Securities Exchange Act of 1934: Richardson v. MacArthur, 451 F.2d 35, 39 (10th Cir. 1971); *Douglas v. Glen E. Hinton Investments, Inc.*, 440 F.2d 912, 914 (9th Cir. 1971); *Klein v. Bower*, 421 F.2d 338, 343 (2nd Cir. 1970); *Morgan v. Koch*, 419 F.2d 993, 996-997 (7th Cir. 1969),

Communications Act of 1934: Bufalino v. Michigan Bell Telephone Co., 404 F.2d 1203, 1208 (6th Cir. 1968), *cert. denied*, 394 U.S. 987 (1969);

Investment Company Act of 1940: Esplin v. Hirschi, 402 F.2d 94, 101 (10th Cir. 1968), *cert. denied*, 394 U.S. 928 (1969).

Thus, the rule that state statutes of limitation are applied where no federal statute of limitations exists is firmly embedded in our jurisprudence, and with good reason, the most basic of which stems from an elemental sense of due process, best summarized by Chief Justice John Marshall's statement in 1805 that an absence of some statute of limitations

> "would be utterly repugnant to the genius of our laws. In a country within which not even treason can be prosecuted after the lapse of three years, it can scarcely be supposed that an individual

would remain forever liable to a pecuniary forfeiture."

Adams v. Woods, 2 Cranch 336, 342 (1805).

Second, statutes of limitation are designed to protect both the courts and defendants from stale claims which depend upon evidence and witnesses the availability and reliability of which have been impaired by the passage of time. *E.g., Campbell v. Haverhill,* 155 U.S. 610, 617 (1895).

Third, given the well-established nature of the rule that state statutes of limitation will be applied in the absence of federal statutes of limitation, it is far more reasonable to assume that Congress intended that rule whenever a federal statute of limitations was omitted than it is to presume that Congress intended the right to sue to be interminable. Hill, *State Procedural Law in Federal Non-Diversity Litigation,* 69 Harv. L. Rev. 66, 78-81, 91-92 (1955), and cases cited therein.

Thus, where the refusal to apply the most analogous state statute of limitations means that the right to sue is interminable, only the most compelling reasons could justify that result, which Chief Justice John Marshall found "utterly repugnant to the genius of our laws." *Adams v. Woods,* 2 Cranch at 342. Were it otherwise, quite obviously defendants would be unfairly and prejudicially subjected to potentially massive and totally unknown financial liabilities.

B. The Supreme Court's Only Exception to the Rule Applying State Statutes of Limitation When No Federal Limitation Exists Has Been Where the United States Government Was Suing to Collect Revenue for the United States Treasury or to Prevent Injury to the United States Government.

The few Supreme Court decisions which refuse to apply the state statute of limitations to a suit by the United States Government invariably do so because the United States is suing as a sovereign to protect its rights as a sovereign, *i.e.,* to collect money for the United States Treasury or to prevent an injury to the United States Government itself. *E.g., United States v. Summerlin,* 310 U.S. 414 (1940) (United States attempting to enforce its claim against an estate); *United States v. Thompson,* 98 U.S. 486 (1879) (United States seeking recovery of funds embezzled from its Treasury); *United States v. Nashville, Chattanooga & St. Louis Railway Co.,* 118 U.S. 120 (1886) (United States suing to collect on bonds owned by the United States); *Davis v. Corona Coal Co.,* 265 U.S. 219 (1924) (United States suing to enforce claims which arose during United States' operation of railroads); *United States v. Dalles Military Road Co.,* 140 U.S. 599 (1891) (United States suing to recover land it had granted). However, whenever the United States Government has sued on behalf of private individuals, the Supreme Court has held that the most analogous state statute of limitations is applicable. *E.g., United States v. Beebe,* 127 U.S. 338 (1888); *Curtner v. United States,* 149 U.S. 662 (1893); *United States v. Des Moines Navigation & R. Co.,* 142 U.S. 510 (1892).

C. The Ninth Circuit's Reasons for Expanding This Limited "Sovereign Immunity" Exception to Include Suits Brought by a Governmental Agency to Recover Back Pay Claims for Private Individuals Are Not Persuasive.

No Supreme Court decision to date has ever found the United States Government or one of its agencies immune from the state statute of limitations where the government or agency was suing to collect money on behalf of private individuals. That, of course, is what the EEOC would have this Court hold for the first time. Yet neither of the reasons offered by the Ninth Circuit for such a substantial departure from Supreme Court precedent has merit.

1. *The Ninth Circuit's Argument That "Public Policy" Prevents Application of State Statutes of Limitation to EEOC Back Pay Claims.*

With no evident analysis of prior Supreme Court decisions or federal court decisions concerning the applicability of state statutes of limitation to government suits brought under other federal statutes, the Ninth Circuit concluded that because an award of back pay to private individuals in an employment discrimination case serves a "public interest," state statutes of limitation could not be applied to such suits. There are at least two compelling answers to that argument.

First, the decisions discussed above page 13 simply do not support the conclusion that a state statute of limitations is inapplicable whenever a "public interest" may be served by the lawsuit. Rather, the only exception to the state statute of limitations rule has heretofore been limited by the Supreme Court to suits where the United States Government is suing as the sovereign, seeking to protect its rights as the sovereign.

The exception is, in other words, simply a manifestation of the doctrine of sovereign immunity. It would be completely inconsistent with the trends of modern law suddenly to expand that doctrine of sovereign immunity to encompass government agency suits to collect money for private individuals.

Thus, prior Supreme Court decisions do not support the conclusion that a state statute of limitations is inapplicable whenever a "public interest" may be served by the lawsuit. Accordingly, this Court's recent comments in *Franks v. Bowman Transportation Co.*,[5] and *Albemarle Paper Company v. Moody*[6] concerning the public purpose served by awards in Title VII cases do not serve to bring such lawsuits, or at least back pay recovery thereunder, within any existing exception to the rule that state statutes of limitation are applied in the absence of federal statutes of limitation. Furthermore, as much could be said about a public purpose to be served by awards in suits under the Civil Rights Act of 1866, yet this Court in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975), applied a state statute of limitations to affirm the dismissal of such a cause of action, making clear that there is nothing "peculiar in a federal civil rights action which would justify special reluctance in applying state law." Therefore, the EEOC's right to sue is not entitled to any special exception simply because its suit is based on Title VII.

The second reason why that Ninth Circuit's "public policy" rationale for refusing to apply the state statute of limitations is erroneous is because, in fact, "public policy" and Congressional intent clearly *require* some

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[5].... U.S. ...., 44 U.S.L.W. 4356 (1976).
[6]422 U.S. 405 (1975).

time limitation on the EEOC's right to sue. Title VII is replete with short specific time deadlines designed to guarantee prompt handling of all employment discrimination charges.[7] This elaborate statutory procedure imposes strict time limitations on two parties to the process—the aggrieved party and the federal court. The issue here presented is whether Congress also intended the EEOC to operate within certain time limitations as well. In a statutory enforcement scheme that depends on all of the parties for success, it is inconceivable that Congress would have intended that only two of the parties—the aggrieved party and the federal court—be required to proceed expeditiously, particularly where the interminable delay of the third party—the EEOC— can effectively nullify any expeditious action by the other two parties.

Furthermore, with no time limitation, the EEOC has absolutely no incentive to expedite its handling of charges. The EEOC can—and obviously does—take as long as it wants to, doing a great disservice not only to aggrieved parties but to respondents as well. While the EEOC has an obvious administrative desire for an interminable period in which to file suit, what Congressional purpose behind Title VII is served by permitting—indeed, encouraging—such delay? Far from increasing compliance with the Act, such delays simply lessen the effectiveness of the EEOC and lessen the likelihood that truly aggrieved parties will turn to the EEOC for relief. Clearly, such delays impose

[7]See Sections 706(b), (e) and (f) of Title VII, as evidence of the Congressional insistence on prompt action and particularly the several onerous time demands and limitations imposed on the federal district courts, such as requiring the court to assign such cases for hearing "at the earliest practicable date," to cause such cases "to be in every way expedited," and "immediately to designate a judge . . . to hear and determine the case." Sections 706(b)(2) and (4).

upon respondents an unwarranted burden and a wholly unreasonable exposure to unknown and potentially massive financial liabilities.

In short, every aspect of Title VII envinces a Congressional conviction and insistence that the enforcement process move swiftly, for the benefit of the aggrieved persons and respondents and for the prompt realization of fair employment practices for all. "Public policy" thus requires prompt EEOC handling of charges, a result which will be assured only by applying a statute of limitations to such claims.

2. *The Ninth Circuit's Argument That the EEOC Should Be Treated the Same as the NLRB in This Respect.*

The second reason the Ninth Circuit offered for refusing to apply the state statute of limitations to the EEOC's complaint was its belief that the EEOC enforcement procedures are analogous to the NLRB enforcement procedures and thus should be treated the same with respect to state statutes of limitation. Yet even assuming that this Court were to conclude that state statutes of limitation are inapplicable to NLRB complaints—an issue not yet decided by this Court[8]—that conclusion cannot properly be extended

[8]Neither of the cases cited by the Ninth Circuit to support its conclusion that state statutes of limitation are inapplicable to NLRB complaints are Supreme Court decisions, and neither decision made that specific holding, for in neither case was the statute of limitations argument directed at the NLRB's delay in filing its complaint. For all that appears in either decision, the NLRB's complaint issued within a reasonable time after the charge was filed; rather, in each case the attack was directed at the NLRB's delay *after* its complaint had issued. Of course, statutes of limitation have always been directed at the timeliness of the filing of the complaint, not the pace of events thereafter. Therefore, while there is certainly dicta in both lower court decisions to support the conclusion that state statutes of limitation are inapplicable to the filing of NLRB complaints, neither case squarely so held.

to the EEOC, for the enforcement procedures of the two agencies are radically different.

The key distinction is that the EEOC must go to court and file its complaint in the federal district court before any legally cognizable adjudication occurs. By contrast, the NLRB never has to file a complaint in the federal district court as part of its normal enforcement procedure; rather, the NLRB issues its own complaint and the NLRB has been given full authority to function in lieu of, and in effect as, the federal district court. Thus, the only time the NLRB goes to federal court is to the appellate level.[9] Obviously, state statutes of limitation have never been thought to apply either to internal agency procedures or to appeals; they are applicable to the filing of a complaint in a court, an act which the EEOC must do and the NLRB need never do. There is, in short, simply no "complaint" that a statute of limitations could apply to insofar as the NLRB is concerned.

This critical distinction between the NLRB enforcement procedure and the EEOC enforcement procedure is all the more significant because it is the result of a deliberate Congressional decision to withhold from the EEOC the authority which the NLRB has always enjoyed. In both 1964 and in 1972, extensive efforts were made in Congress to give the EEOC full NLRB-type enforcement authority—and both efforts were rejected by Congress in favor of the present requirement that the EEOC initiate its enforcement efforts by the filing of a complaint in the federal district court. Thus, to hold the enforcement procedures of the two agencies

[9]The only exceptions are suits by the NLRB in federal district courts to obtain preliminary injunctive relief pending completion of the adjudicative process before the NLRB itself. 29 U.S.C. Sections 160(j) and (l).

to be analogous is to ignore the Congressional refusal to give the EEOC the same enforcement authority it has given the NLRB.

The Ninth Circuit's NLRB analogy is thus totally inapposite.

Conclusion.

In the final analysis, the decision of the Ninth Circuit giving the EEOC an interminable right to sue to collect back pay for private individuals will plainly frustrate the Congressional intent that discrimination cases be pursued expeditiously and will just as plainly prejudice respondents in the defense of such suits. In view of the fact that the holding of the Ninth Circuit on this issue is in direct conflict with decisions of the Fifth Circuit and in view of the fact that a definitive resolution of this issue is of enormous importance in employment discrimination cases, Petitioner respectfully submits that this Petition for Certiorari should be granted.

DATED: July 22, 1976.

Respectfully submitted,

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APPENDIX.

Opinion.

In the United States Court of Appeals, for the Ninth Circuit.

Equal Employment Opportunity Commission, Plaintiff-Appellant, v. Occidental Life Insurance Company of California, Defendant-Appellee. No. 75-1705.

Appeal from the United States District Court for the Central District of California.

Before: WRIGHT, KILKENNY and TRASK, Circuit Judges. WRIGHT, Circuit Judge:

In this Title VII action the Equal Employment Opportunity Commission (EEOC) appeals from the district court's order of dismissal. We reverse and remand.

I.

PROCEEDINGS BELOW

On December 27, 1970, Tamar Edelson filed with the EEOC a charge against Occidental Life Insurance Company (Occidental), alleging that she had been discriminated against because of her sex. She specified that "the most recent date on which this discrimination took place" was October 1, 1970, the date of her discharge by Occidental.

The EEOC referred the charge to the California Fair Employment Practices Commission, in accordance with the provisions of Section 706(c) [42 U.S.C. § 2000e-5(c)]. When that agency took no action, the charge was formally filed with the EEOC on March 9, 1971.

The EEOC undertook an investigation and, on February 25, 1972, its District Director issued Findings

of Fact that Occidental had discriminated against Ms. Edelson and also had discriminated against many other employees through a variety of practices and policies. Occidental filed exceptions to the findings on March 23, 1972. The EEOC issued its "Reasonable Cause" Determination on February 8, 1973 and during the following year, held a conciliation meeting with Occidental.

When that effort proved unsuccessful, the EEOC filed this action in district court on February 22, 1974.

That court granted Occidental's motion to dismiss, finding that:

1. The EEOC has no authority to file suit more than 180 days after the filing of the underlying charge, or where, as here, the charge was filed prior to the 1972 amendments to Title VII of the Civil Rights Act of 1964, more than 180 days after the effective date of such amendments;
2. Alternatively, the EEOC was barred from filing this suit by the California statute of limitations;
3. Alternatively, the EEOC was barred from proceeding on paragraphs 8(b) and 9(c) of its complaint because the allegations contained therein were outside the scope of the underlying charge; and
4. In any event, the EEOC was barred from seeking back pay for any alleged violations occurring more than two years prior to the filing of the underlying charge.

By its appeal herein, the EEOC challenges only the first three findings by the court.

We hold:

(1) The 180-day language of Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] does not constitute a limitation upon the EEOC's ability to sue in its own name;

(2) This action is not barred by any state by any state limitations period; and

(3) The EEOC properly included subparagraphs 8 (b) and 9(c) in its complaint.

II.

THE 180-DAY LANGUAGE OF SECTION 706 (f)(1)

Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] states in pertinent part:[1]

> . . . [I]f within one hundred and eighty days from the filing of such charge . . . the [EEOC] has not filed a civil action under this section . . . the [EEOC] . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the [EEOC], by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice.

The district court found that the above statute precluded the EEOC from bringing this action.

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[1]Before the 1972 amendment of Section 706(f)(1), the relevant time periods were 30 days for both the filing of the charge with the EEOC, and filing suit after receipt of a right-to-sue letter.

The statute on its face contains no express limitation upon suit *by the EEOC*. Rather, it precludes civil action by the charging party for 180 days so that the EEOC may during that period pursue conciliation.[2] If, after 180 days, the EEOC has neither filed a civil action nor achieved conciliation, the charging party may demand a "right-to-sue" letter. On receipt of it, the charging party has 90 days within which to sue. Should such private action be filed, the EEOC would apparently be restricted to intervention.[3]

However, should the person concerned choose not to sue during the allotted 90 days, the EEOC is not prohibited from suing thereafter. The statute in no way limits the time within which it must sue, so long as the charging party has not done so.[4]

This issue has been before the Courts of Appeals for the Third, Fourth, Fifth, Sixth, Eighth and Tenth Circuits. All have ruled that Section 706(f)(1) [42 U.S.C. § 2000e-5 (f)(1)] does not preclude suit by the EEOC after the 180-day period has run.[5]

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[2]The charging party may sue before the 180-day period has run if:

(a) The EEOC finds no reasonable cause during that time period [42 U.S.C. § 2000e-5(b)]; or

(b) The EEOC dismisses the charge during that time period [42 U.S.C. § 2000e-5(f)(1)].

[3]H.R. Rep. No. 92-238, 92nd Cong., 1st Sess. 12 (1971), 1972 U.S.C.C.A.N. 2148, *quoted in Equal Employment Opportunity Comm'n v. Duval Corp.*, 528 F.2d 945, 948 n.4 (10th Cir. 1976).

[4]The sole exception is that the EEOC must wait 30 days from the filing of the charge before filing suit. [42 U.S.C. § 2000e-5(f)(1)].

[5]*Equal Employment Opportunity Comm'n v. Duval Corp.*, 528 F.2d 945, 947 (10th Cir. 1976); *Equal Employment Opportunity Comm'n v. Meyer Bros. Drug Co.*, 521 F.2d 1364, 1365 (8th Cir. 1975); *Equal Employment Opportunity Comm'n v. E.I. duPont de Nemours and Co.*, 516 F.2d 1297 (3rd Cir. 1975); *Equal Employment Opportunity Comm'n v. Kimberley-Clark Corp.*, 511 F.2d 1352, 1356-59 (6th Cir. 1975); *Equal Employment Opportunity Comm'n v. Louisville and Nashville R.R.*, 505 F.2d 610 (5th Cir. 1974); *Equal Employment Opportunity Comm'n v. Cleveland Mills*, 502 F.2d 153 (4th Cir. 1974). *See also Equal Employment Opportunity Comm'n v. Local 41, Bartenders' International Union*, 369 F. Supp. 827, 829-31 (N.D. Cal. 1973).

Finding this avalanche of authority most persuasive, we adopt the rule that the 180-day language of Section 706(f)(1) does not constitute a limitation upon the EEOC's ability to sue in its own name. We conclude that the district court erred in barring this suit on the basis of the 180-day language in Section 706(f)(1).

III.
APPLICABILITY OF RELEVANT STATE LIMITATIONS PERIOD

The district court held alternatively that the EEOC suit was barred by the one-year California statute of limitations found in California Code of Civil Procedure §340(3).

We have already determined that Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] does not require the EEOC to file suit within 180 days of the date the private charge is filed with that agency. There being no other portion of Title VII susceptible of interpretation as a limitation on the time within which the EEOC must bring suit, we find that there is simply no governing federal limitations period. *See Equal Employment Opportunity Comm'n v. Griffin Wheel Co.*, 511 F.2d 456, 458, *aff'd on rehearing*, 521 F.2d 223 (5th Cir. 1975).

It is well established that in a *private* civil rights action, where Congress has not provided a statute of limitations, the state statute applied to similar liti-

gation will be applied to the federal action. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975), and cases cited therein; *Griffin v. Pacific Maritime Ass'n*, 478 F.2d 1118, 1119 (9th Cir. 1973).

In its complaint the EEOC seeks both injunctive relief and back pay. By its prayer for injunctive relief the EEOC promotes *public* policy and seeks to vindicate rights belonging to the United States as sovereign. Thus, the EEOC's request for injunctive relief is not subject to any state limitations period. *Griffin Wheel, supra,* 511 F.2d at 459; *Kimberly-Clark, supra,* 511 F.2d at 1359-60. *Cf. United States v. Summerlin,* 310 U.S. 414 (1940). The district court erred insofar as it barred EEOC's request for injunctive relief on the basis of the California limitations period.[6]

We consider the request for back pay. Occidental argues that, even though the EEOC is party plaintiff, "[i]nsofar as the . . . suit constitutes a proper legal conduit for the recovery of sums due individual citizens rather than the treasury, it is a private and not a public action." *United States v. Georgia Power,* 474 F.2d 906, 923 (5th Cir. 1973), *quoted in Griffin Wheel, supra,* 511 F.2d at 458.

Since we cannot agree that EEOC's request for back pay must be treated as "private" in nature, we believe the district court erred in applying the California limitations period to bar the back pay request.

Our starting point is the recent statement of the Supreme Court in *Franks v. Bowman Transp. Co.,* ..... U.S. ....., 44 USLW 4356 (Mar. 24, 1976):

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[6]We express no opinion as to which, if any, state limitations statute would apply had an individual or a class, rather than the EEOC, been party plaintiff.

"[C]laims under Title VII involve the vindication of a major public interest. . . .". *Id.* at ..... n.40, 44 USLW at 4365 n.40, *quoting* Section-By-Section Analysis, accompanying the Equal Employment Opportunity Act of 1972—Conference Report, 118 Cong. Rec. 7166, 7168 (1972).

The Court in *Albermarle Paper Co. v. Moody,* 422 U.S. 405 (1975), discussed in some detail the nature of Title VII claims for backpay:

> As the Court observed in *Griggs v. Duke Power Co.*, 401 U.S., at 429-430, the primary objective [of Title VII] was a prophylactic one:
>
> > "It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an indentifiable group of white employees over other employees."
>
> Backpay has an obvious connection with this purpose. If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a backpay award that "provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history." *United States v. N. L. Industries, Inc.*, 479 F.2d 354, 379 (CA8 1973).
>
> It is *also* the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination.

Id. at 417-18. (Emphasis added.)

That an award of back pay promotes the primary statutory objective of deterrence[7] was also noted by the Sixth Circuit in *Meadows v. Ford Motor Company*, 510 F.2d 939, 948 (6th Cir. 1975).

The *Moody* Court noted that "[t]he backpay provision [of Title VII] was expressly modeled on the backpay provision of the National Labor Relations Act." 422 U.S. at 419 and n.11. It is established doctrine that a back pay order under Section 10(c) of the National Labor Relations Act [29 U.S.C. § 160(c)] " 'is a reparation order designed to vindicate the public policy of the statute by making the employees whole for losses suffered on account of an unfair labor practice.' " *National Labor Relations Board v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263 (1969), *quoting Nathanson v. National Labor Relations Board*, 344 U.S. 25, 27 (1952).

It is true, of course, that whenever a party obtains relief under a federal statute, public policy is vindicated even though direct, immediately cognizable benefits may flow only to the individual. Thus, for example, private action under Title 42 U.S.C. § 1981 is subject to state limitations periods despite the fact that each recovery may be said to promote the public policy embodied in the statute. *See Johnson, supra*, 421 U.S. 454 (1975).

But certain federal acts, such as the National Labor Relations Act, are intended to be broadly prophylactic

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[7]The Court in *Moody* stated that

> "backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy *and* making persons whole for injuries suffered through past discrimination."

422 U.S. at 421. (Emphasis added.)

as well as remedial. *See* Section 1 [29 U.S.C. § 151]. Several circuits, including our own, have recognized that back pay orders promote the prophylactic as well as the remedial purposes of the National Labor Relations Act.[8]

The National Labor Relations Board (NLRB) does not pursue the "adjudication of private rights." Rather, it "acts in a public capacity to give effect to the declared public policy of the Act. . . ." *National Licorice Co. v. National Labor Relations Board*, 309 U.S. 350, 362 (1940). "The fact that these proceedings [may] operate to confer an incidental benefit on private persons does not detract from this public purpose." *Nabors v. National Labor Relations Board*, 323 F.2d 686, 688-89 (5th Cir. 1963).

Accordingly, the NLRB, as an agency of the United States seeking enforcement of public rights, is not bound by state limitations statutes even when seeking back pay. *Nabors, supra*, at 688. *See also J. H. Rutter-Rex Mfg. Co. v. National Labor Relations Board*, 399 F.2d 356, 358, 362, 364 (5th Cir. 1968), *rev'd on other grounds*, 396 U.S. 258 (1969).[9]

The Civil Rights Act of 1964 grew out of Congressional awareness of the continued, pervasive discrimina-

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[8]*Marriott Corp. v. National Labor Relations Board*, 491 F.2d 367, 371 (9th Cir. 1974); *National Labor Relations Board v. United Marine Division, Local 33, National Maritime Union, AFL-CIO*, 417 F.2d 865, 868 (2nd Cir. 1969); *Trinity Valley Iron & Steel Co. v. National Labor Relations Board*, 410 F.2d 1161, 1168 (5th Cir. 1969); *Nabors v. National Labor Relations Board*, 323 F.2d 686, 688-89 (5th Cir. 1963).

[9]In *Rutter-Rex*, after ruling that state limitations statutes did not apply to the NLRB's action, the Fifth Circuit modified the Board's order because of inordinate administrative delay to the prejudice of defendant. The Supreme Court reversed and ordered enforcement of the back pay order in its entirety. In doing so, the Court assumed the inapplicability of state limitations periods.

tion against minorities, particularly Negroes, in voting, access to public facilities, public education and employment. As the Committee on the Judiciary of the House of Representatives reported:

> Considerable progress has been made in eliminating discrimination in many areas. . . . Nevertheless, in the last decade it has become increasingly clear that progress has been too slow and that national legislation is required to meet a national need which becomes ever more obvious. . . . [This Act] is designed as a step toward eradicating significant areas of discrimination on a nationwide basis. It is general in application and national in scope.

H. Rep. No. 914, 1964 U.S.C.C.A.N. 2391, 2393 (1964).

Thus, despite the existence in 1964 of such remedial statutes as the Civil Rights Acts of 1866, 1870 and 1871 [42 U.S.C. §§ 1981-88], Congress believed that some additional federal action was necessary to further the public objective of elimination of nationwide discrimination.[10] It decided that this objective could best be pursued by federal agency enforcement.

The original Section 706 of the Civil Rights Act of 1964, 78 Stat. 259-61, established an enforcement scheme to be implemented primarily by the EEOC. In 1972 Congress made it even more clear that "the vast majority of complaints will be handled through the offices of the EEOC or the Attorney General. . . ."

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[10]In *Johnson, supra,* the Court made clear the "separate, distinct and independent" remedies available under Title 42 U.S.C. § 1981 on the one hand, and Title VII on the other. 421 U.S. at 461.

Section-By-Section Analysis, *supra,* 118 Cong. Rec. at 7168.

The basic function of the EEOC, as with the NLRB, is to prevent and eliminate unlawful employment "practices and devices," primarily through "conference, conciliation, and persuasion." *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 44 (1974); Section 706(a) & (b) [42 U.S.C. § 2000e-5(a) & (b)]. The EEOC has the power to investigate, promote voluntary compliance, and bring suit upon failure of conciliation efforts.[11]

The EEOC vindicates public policy by suing in federal court, as does the NLRB by seeking enforcement of its orders in the courts of appeals. This is so regardless of the type of relief sought by either. As in labor law, so in Title VII law, the fact that private parties may benefit from public agency action does not detract from the public nature of those proceedings.

We are aware that the Fifth Circuit has reached a contrary result in at least two cases. *Griffin Wheel, supra,* 511 F.2d at 458-59; *Georgia Power, supra,* 474 F.2d at 922-23. We decline to follow its lead.

Both of those cases were decided before the Supreme Court decisions in *Moody, supra,* and *Franks, supra.* Moreover, the court in *Georgia Power,* 474 F.2d at 921, relied on the decision of the Supreme Court in *Rutter-Rex, supra,* but ignored the Court's statement therein that "back pay . . . is . . . designed to vindicate . . . public policy. . . ." 396 U.S. at 263.

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[11]Unlike the NLRB, the EEOC has no adjudicative powers. Yet the NLRB must itself seek court enforcement of its orders.

Occidental directs our attention to the Court's decision in *Johnson, supra*. The Court there held that a federal cause of action under Title 42 U.S.C. § 1981 was governed by "the most appropriate [limitation period] provided by state law." 421 U.S. at 462. However, *Johnson* involved a private claimant litigating under Section 1981, while this case involves a public agency enforcing Title VII rights.

Also, the *Johnson* Court did not qualify its holding according to the type of relief sought. Indeed, by discussing the availability under Section 1981 of "both equitable and legal relief," 421 U.S. at 460, the Court intimated that state limitations periods would apply to private actions brought under Section 1981, regardless of the type of relief sought.

Earlier in this opinion we joined the Fifth and Sixth Circuits, in *Griffin Wheel* and *Kimberly-Clark* respectively, in ruling that state limitations periods do not govern the EEOC's request for injunctive relief. Nothing in *Johnson* dictates a contrary conclusion. Similarly, *Johnson* does not preclude us from concluding that a request by the EEOC for back pay, in vindication of public policy, is likewise immune from state limitations[12] periods.[13]

There are sound practical considerations in support of our conclusion. First, subjecting the EEOC to state

[12]It appears that the EEOC would likewise be immune from the defense of laches. *Cf. United States v. Summerlin*, 310 U.S. 414, 416 (1940); *Nabors v. National Labor Relations Board*, 323 F.2d 686, 688 (5th Cir. 1963). *But see Griffin Wheel, supra*, 511 F.2d at 459 n.5; *Georgia Power, supra*, 474 F.2d at 923. However, since the issue was not raised herein, we need not address it.

[13]The court in *Kimberly-Clark* seemed to so conclude, although it did not make clear what type of relief was at issue. 511 F.2d at 1359-60.

limitations periods, often as short as one year,[14] would frustrate its attempts to resolve disputes by means of administrative "conference, conciliation, and persuasion," [42 U.S.C. § 2000e-5(b)], rather than by court action.[15]

Second, it would be cumbersome to determine the applicability of state limitations statutes according to the type of relief sought. As the Sixth Circuit stated in *Meadows, supra*, 510 F.2d at 945-46:

> "[Back pay] may not properly be viewed as a mere adjunct of some more basic equity. It is properly viewed as an integral part of the whole of relief which seeks not to punish the respondent but to compensate the victim of discrimination."

It is unreasonable to give the EEOC an open ticket for equitable relief, but to impose time constraints on back pay claims even though they are "an integral part of the whole of relief" sought.

Third, Section 706(g) [42 U.S.C. § 2000e-5(g)] provides: "Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission [EEOC]." Thus, an employer need not produce past employment records except for the period of time the charge is pending, and the preceding two years.

Finally, despite the absence of a controlling federal limitations period, at least two factors are at work

[14]*See, e.g., Johnson, supra*, 421 U.S. at 462 & n.7; *Griffin Wheel, supra*, 511 F.2d at 459.

[15]Clearly the cause of action "accrues" on the last date on which the allegedly unlawful act or practice occurs. *Collins v. United Airlines, Inc.*, 514 F.2d 594, 596 & n.2 (9th Cir. 1975); *Griffin Wheel, supra*, 511 F.2d at 459 n.6. *Cf. Johnson, supra*, 421 U.S. at 462.

to minimize EEOC dalliance. First, the charging party may demand a right-to-sue letter should the EEOC fail to obtain voluntary compliance or to sue within 180 days of the original filing. Section 706(f)(1) [42 U.S.C. § 2000e-5 (f)(1)]; *Johnson, supra,* 421 U.S. at 458. Second, in extreme cases a federal district court could compel agency action. *See* Sections 6(b) and 10e(A) of the Administrative Procedure Act [5 U.S.C. §§ 555(b), 706(1)]. *Cf. National Labor Relations Board v. J. H. Rutter-Rex Mfg. Co.,* 396 U.S. 258, 266 & n. 3 (1969) (dictum).

We conclude that the district court erred insofar as it barred the EEOC's back pay claim on the basis of the California limitations period.

IV.
SCOPE OF THE EEOC'S COMPLAINT

In her original charge filed with the EEOC, Ms. Edelson alleged that Occidental refused, on account of sex, to provide her with maternity leave, other pregnancy benefits, insurance, vacation benefits and seniority rights.

In the course of its investigation the EEOC discovered apparent discrimination against unmarried female employees in the distribution of "pregnancy-related benefits." It also discovered apparent discrimination against male employees in the administration of the retirement system. Although these forms of alleged discrimination were not mentioned in the original charge, the EEOC included them in subparagraphs 8(b) and 9(c) of its complaint. Occidental argued successfully below that these charges should be dismissed as being outside the scope of the original charge.

As amended in 1972, Section 710 of Title VII provides:

> For the purpose of all hearings and investigations conducted by the [EEOC] or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

[86 Stat. 109; 42 U.S.C. § 2000e-9]

While the investigation in this case preceded the 1972 amendment of Section 710, it is clear that the prior statute was similar in scope. *See Motorola, Inc. v. McLain,* 484 F.2d 1339, 1342-44 (7th Cir. 1973); *Graniteville Co. v. Equal Employment Opportunity Comm'n,* 438 F.2d 32, 39 (4th Cir. 1971).

Section 11(1) of the National Labor Relations Act [29 U.S.C. § 161(1)] provides in part that the NLRB may gain access to "any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." This language was given a broad reach in *National Labor Relations Board v. Wyman-Gordon Co.,* 394 U.S. 759, 768 (1969).

Section 709(a) of Title VII [42 U.S.C. § 2000e-8(a)] today provides, as it did in 1964:

> In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Had Occidental believed that the EEOC's investigation exceeded the permissible statutory scope, it could have refused the EEOC's demand for access and sought adjudication of its rights.[16] Occidental did not do so. Thus we can only conclude that the EEOC investigation was reasonable and that the information supporting the allegations in subparagraphs 8(b) and 9(c) was acquired during that reasonable investigation.

In *Equal Employment Opportunity Comm'n v. General Electric Co.*, ... F.2d ...., ... (4th Cir. Jan. 22, 1976), the Fourth Circuit held:

> *So long as* [*discovery of*] *the new discrimination arises out of the reasonable investigation of the charge filed,* it can be the subject of a "reasonable cause" determination, to be followed by an offer by the Commission of conciliation, and, if conciliation fails, by a civil suit, without the filing of a new charge on such claim of discrimination. In other words, the original charge is sufficient to support action by the EEOC as well as a civil suit under the Act for *any discrimination stated in the charge itself or* [*discovered*] *in the course of a reasonable investigation of that charge,* provided such discrimination was included in the reasonable cause determination of the EEOC and was followed by compliance with the conciliation procedures fixed in the Act.

(Emphasis in original.) *Accord, Equal Employment Opportunity Comm'n v. Huttig Sash & Door Co.*, 511 F.2d 453, 455 (5th Cir. 1975); *Equal Employment Opportunity Comm'n v. Kimberly-Clark Corp.*, 511 F.2d 1352, 1363 (6th Cir. 1975). We agree with the reasoning of the Fourth, Fifth and Sixth Circuits.[17]

[16] *See Local No. 104, Sheet Metal Workers International Ass'n v. Equal Employment Opportunity Comm'n,* 439 F.2d 237, 241-43 (9th Cir. 1971); *Circle K Corp. v. Equal Employment Opportunity Comm'n,* 501 F.2d 1052 (10th Cir. 1974); *Joslin Dry Goods Co. v. Equal Employment Opportunity Comm'n,* 483 F.2d 178 (10th Cir. 1973); *Motorola, Inc. v. McLain, supra; Graniteville Co., supra.*

In this case, Occidental received adequate notice during administrative investigation of the substance of the issues subsequently raised in subparagraphs 8(b) and 9(c) of the EEOC's complaint. Reference was made to those issues in both the District Director's Findings of Fact (February 25, 1972), and the EEOC's Determination of Reasonable Cause (February 8, 1973). Thus the EEOC complied with the statute by presenting these issues for conciliation. *See* Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)].

We note that the EEOC itself could independently bring charges based upon the information it reasonably acquired during the investigation of Ms. Edelson's charge. *See* Section 706(b) [42 U.S.C. § 2000e-5(b)]. To require the EEOC to pursue that route, rather than allowing it to include the new charges along with the original one in a single Determination of Reasonable Cause, would be to champion form over substance and to generate "an inexcusable waste of

[17] In so agreeing we do not depart in any respect from our recent decision in *Oubichon v. North American Rockwell Corp.*, 482 F.2d 569 (9th Cir. 1973), in which we stated:

> "When an employee seeks judicial relief for incidents not listed in his original charge to the EEOC, the judicial complaint nevertheless may encompass any discrimination like or reasonably related to the allegations of the EEOC charge, including new acts occurring during the pendency of the charge before the EEOC."

Id. at 571.

Oubichon involved the complaint of a private party, he being subject to traditional notions of standing. We deal here with a complaint filed by a public agency seeking vindication of public rights.

valuable administrative resources" and "intolerable delay," in violation of statutory purpose. *General Electric, supra,* ..... F.2d at ....., 11 C.C.H.—Empl. Prac. Dec. at 6614.

It remains true that Ms. Edelson would not have had "standing" to charge Occidental with discrimination against unmarried female employees (Ms. Edelson was married), or against male employees with respect to retirement. However, as we have discussed earlier, the EEOC is charged with the vindication of public policy, not merely with the enforcement of private rights. In this case, enforcement by the EEOC of the objectives to Title VII should not be frustrated because a private charging party may not have had "standing" to make a particular claim.

Finally, it is argued that "amendment" by the EEOC of the original charge may operate to the detriment of the charging party. In this case such a result is speculative. In any case, the charging party should be able to intervene in either the administrative or judicial proceeding to insure that his or her rights are fully protected. *See* Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)].

For the above reasons, we conclude that the district court erred in dismissing subparagraphs 8(b) and 9(c) of the EEOC's complaint.

V.
CONCLUSION

The judgment of the district court is reversed and the cause is remanded for further proceedings consistent with this opinion.